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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/627,146	07/27/2000	ROBERT A. MOSS	MOSS-1	1215
1473	7590	05/28/2003		
FISH & NEAVE 1251 AVENUE OF THE AMERICAS 50TH FLOOR NEW YORK, NY 10020-1105			EXAMINER CHAMBERS, MICHAEL S	
			ART UNIT 3711	PAPER NUMBER 24
DATE MAILED: 05/28/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Offic Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/627,146	MOSS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Michael Chambers	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 21 April 2003.

2a) This action is **FINAL**.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-35,37-39,41-44,46 and 59-63 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-27,32-35,41-44,46 and 59-63 is/are rejected.

7) Claim(s) 28-31 and 37-39 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10, 12,14,17,25,32-35,59, 60,62 are rejected under 35 U.S.C. 102(b) as being anticipated by Culpepper (3861679). Culpepper discloses a rigid member, first hinge ,tether and ball mounting device (fig 1).

As to claims 2 and 60: Culpepper discloses a rigid member that rotates substantially in a vertical plane ( Fig 1 ).

As to claim 3: Culpepper discloses a frame in substantially in the same vertical plane ( Fig 1 ).

As to claims 4 and 5: The rigid member of Culpepper would have a weight less than the weight of the ball mounting assembly and ball. And the center of gravity would be below the rigid member's second end.

As to claim 6: Culpepper discloses a hinge secured to the frame ( Fig 1 ).

As to claim 7: Culpepper discloses a horizontal support (15).

As to claim 8: Culpepper discloses a frame with a vertical and horizontal support (Fig 1).

As to claim 9: Culpepper discloses a base ( Fig 1 ).

As to claim 10: Culpepper discloses a plurality of legs ( Fig 1 ).

As to claim 12: Culpepper discloses a vertical support that is adjustable ( Fig 1 ).

As to claim 14: Culpepper discloses a plurality of legs ( Fig 1 –setscrew at top of vertical support ).

As to claim 17: Culpepper discloses a rope and rod ( Fig 1 ).

As to claim 25: Culpepper discloses length that is adjustable ( 4:1-2 ).

As to claim 32 : Culpepper discloses a hinge that is rotatable ( Fig 1 ).

As to claim 33: Culpepper discloses a hinge that has a spring ( Fig 1 ).

As to claims 34 and 35: Culpepper discloses a spring hinge ( Fig 1 ).

As to claim 59 : See claim rejection for claim 1.

As to claim 60: Culpepper discloses a member fixed to said hinge and rotatable (Fig 1 ).

As to claim 62: Culpepper discloses at least one tubular member adapted to rotate around said support member ( Fig 1 ).

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, 13, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Culpepper in view of Official Notice. Official Notice was taken in paper 22 that various equivalent means for adjusting vertical and horizontal positions are well known in the art. It would have been obvious to one of ordinary skill in the art to have employed a telescoping means to more easily adjust the device to each player.

Claims 16-24,26-27, 41-44, 46, 61, 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Culpepper in view of Garver. Culpepper does not disclose a

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releasable ball. Garver discloses a releasable ball (21,23). It would have been obvious to one of ordinary skill in the art to have employed the ball of Garver with the apparatus of Culpepper in order to make the game more enjoyable to play.

As to claim 17: Culpepper discloses a rope (Fig 1).

As to claims 18-24,44 and 46: No criticality is seen in the means used to attach the ball.

Official Notice was taken in paper 22 that various equivalent means to attach balls are well known in the art. It would have been obvious to one of ordinary skill in the art to have employed any one of several different equivalent attachment means based on cost and manufacturing methods.

As to claims 26, 27 and 61: No criticality is seen in the material used for the rod.

Official Notice was taken in paper 22 that various equivalent materials for rigid rods are well known in the art. It would have been obvious to one of ordinary skill in the art to have employed any one of several different equivalent rod materials based on cost and manufacturing methods.

As to claims 41, 42 and 43: No criticality is seen in the tether used. Official Notice was taken in paper 22 that various equivalent materials and adjustment means are well known in the art. It would have been obvious to one of ordinary skill in the art to have employed any one of several different equivalent tethers based on manufacturing costs and player preferences.

***Allowable Subject Matter***

2. Claims 28-31 and 37-39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

On further review of the prior art, it was determined that the claim language does not avoid the cited art. As noted in the previous reasons for allowance, the hinged rigid member with tethered ball appears novel. If this limitation is included in the base claims, the application should be allowable.

***Response to Arguments***

Applicant's arguments filed 5/13/03 have been fully considered but they are not persuasive.

The applicant argues that the examiner has failed to take into account the structural relationship of the hinge and substantially rigid members. Although the specification and drawings detail this relationship, the independent claims do not include these limitations.

Claims 1 and 59 call for the following:

The instant invention claims	Culpepper discloses
A substantially rigid member	A substantially rigid member (13)
A first hinge that can be suspended from a frame	A first hinge that can be suspended from a frame (fig 1)
Rigid member rotates about a horizontal axis	Rigid member rotates about a horizontal axis (fig 1)
A tether	A tether (23)
A ball mounting device.	A ball mounting device (21).

The existing claim language has not clearly detailed the structure or the means of attachment or what type of hinge is used. Also the term "can be" does not positively recite a limitation in the claim. It merely suggests that a limitation may be used. Although the applicant argues that the cited reference does not have a hinge attached to the end of the rigid rod, the existing claim language does not require this limitation.

With respect to claims 16-24.

The test for an obvious rejection is based on what would be obvious to one ordinary skill in the art, not what would be obvious to the prior art inventor. The use of fixed and releasable balls is well known in the art and therefore would be obvious to one of ordinary skill. The argument that Culpepper would not be aware of this modification is not found persuasive.

***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Chambers whose telephone number is 703-306-5516. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Sewell can be reached on 703-308-2126. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1078.

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May 22, 2003

Michael Chambers  
Examiner  
Art Unit 3711

  
Paul T. Sewell  
Supervisory Patent Examiner  
Group 3700